

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:)	
)	
)	
)	
Capital Intrastate Funding,)	NOTICE OF INTENT TO SEEK
LLC,)	THE ISSUANCE OF A STOP ORDER
)	DENYING EFFECTIVENESS TO
)	A REGISTRATION STATEMENT
Respondent.)	File Number 07026

The Securities Division of the Office of the Attorney General (the "Division"), under the authority of the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703, upon due consideration of the subject matter herein and having reason to believe that the registration statement submitted by Capital Intrastate Funding, LLC ("Respondent" or "CIF2"), is incomplete, and will work or tend to work a fraud upon purchasers of its securities or would so operate, does hereby notify Respondent that the Division intends to seek the issuance of a stop order, pursuant to S.C. Code Ann. § 35-1-306(a), denying effectiveness to the registration statement filed by Respondent with the Division on or about June 11, 2007.

In accordance with Section 35-1-306 of the Act, the Division hereby alleges the following:

FACTUAL HISTORY

Capital Investment Funding, L.L.C.

1. Capital Investment Funding, L.L.C. ("CIF1") has been issuing securities, in the form of promissory notes, in South Carolina since approximately 1999.

2. Arthur M. Field (“Arthur Field” or “Dr. Field”) is the manger of CIF1 and a member of CIF1 who owns approximately 90% of CIF1.
3. On March 7, 2007, CIF1 filed a registration statement with the Division to register \$50,000,000 in Series 2007 Senior Notes.
4. On April 4, 2007, CIF1 filed an amended prospectus with the Division for the offer of \$50,000,000 in Series 2007 Senior Notes.
5. On May 11, 2007, the Division issued to CIF1 a Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement and to Seek the Issuance of an Order Revoking Available Exemptions (the “Notice”) regarding the registration of \$50,000,000 in Series 2007 Senior Notes. As part of this Notice, the Division made the following determinations:
 - a. Although CIF1 claimed that the offering and sale of its notes were exempt from registration pursuant to 15 U.S.C. § 77c(a)(11) (the “intrastate exemption”), CIF1 did not qualify for the intrastate exemption because it did not conduct a predominant amount of its business within South Carolina.
 - b. CIF1’s offering of the Series 2007 Senior Notes would work or would tend to work a fraud upon purchasers because (1) Arthur Field indicated that CIF1’s major debtor is likely to repay its debt to CIF1 in the near future, (2) CIF1 and Arthur Field stated such repayment could put CIF1 out of business, and (3) such repayment could have an adverse impact on note holders of CIF1.
 - c. CIF1’s registration statement was incomplete in a material respect because CIF1 did not disclose that its major debtor was effectively in default or that an anticipatory breach situation existed on the \$17,057,000 debt that the major debtor owed to CIF1.

- d. CIF1's 2006 audited financial statements were false or misleading with respect to a material fact because the financial statements, and notes thereto, included multiple misstatements.
- e. CIF1's offering of the Series 2007 Senior Notes would work or would tend to work a fraud upon purchasers because the 2006 audited financial statements, which were attached to CIF1's prospectus, contained numerous material omissions and misstatements that could mislead an investor or potential investor.
- f. CIF1's offering of the Series 2007 Senior Notes would work or would tend to work a fraud upon purchasers if the information about the loans made by Cosimo, Inc. ("Cosimo"), CIF1's primary re-lender, contained material errors and if Arthur Field, who owns directly or indirectly 50% of Cosimo, did not perform due diligence to obtain accurate and complete information about Cosimo's loans.
- g. Other examples exist in which CIF1's registration statement was incomplete in a material respect.
- h. Other examples exist in which CIF1's registration statement was false or misleading with respect to a material fact.
- i. Taken as a whole, the volume and nature of the problem areas in CIF1's prospectus made the offering tend to work or work a fraud upon purchasers of CIF1's securities.
- j. Based on various facts, including the fact that CIF1 may soon declare a winding up of its business and go out of business, CIF1 should not offer securities pursuant to the exemptions from registration contained in S.C. Code Ann. § 35-1-202.

notes receivable at December 31, 2006, CIF1's current liabilities exceeded its current assets by approximately \$7,600,000 and \$8,100,000 at December 31, 2006, and June 30, 2007, respectively.¹

- e. CIF1 has contingent liabilities arising from its failure to register its securities with the SEC because it did not satisfy the requirements of the intrastate exemption.

10. The value of notes held by CIF1's investors may be less than the amount invested by those investors, and the value of some of CIF1's notes receivable may be less than the amount of the loan to those debtors, because of, among other issues, the following:

- a. The default and/or anticipatory breach by CIF1's major debtor.
- b. CIF1's deteriorating financial position and cash flow from December 31, 2006, to June 30, 2007.
- c. CIF1's contingent liabilities because of its failure to register its securities with the SEC.
- d. CIF1's withdrawal of its registration statement.

Capital Intrastate Funding, LLC

11. On May 25, 2007, the following members of CIF2 signed the Amended Operating Agreement of CIF2: Davyd G. Field ("Davyd Field"), Ashley Morey ("Morey"), Gary Malvern ("Malvern"), F. Scott Pfeiffer ("Pfeiffer") for Britannia Trust, and Davyd Field for Tikal Trust. In this Amended Operating Agreement, the members of CIF2 agreed that:

- a. Davyd Field and Morey would manage CIF2.
- b. "In the event that Ashley Morey shall cease to be employed by the Company, her membership interest shall immediately terminate and she shall be compensated

¹ The Division believes that these amounts are conservative estimates and therefore represent the minimum amount by which current liabilities exceed current assets at each of the stated dates.

the amount of her capital account and she shall cease to be a manager. No other amounts shall be due her.”

c. “If there is a conflict between the Managers, this conflict shall be resolved automatically in favor of Davyd Field.”

d. A member shall not have the right to transfer his membership interest, without a vote or written consent of members holding a majority interest, “except that Davyd Field shall be exempt from this provision and may dispose of his interest as he sees fit at any time in whole or in part.”

12. On May 29, 2007, Davyd Field filed CIF2’s Articles of Organization with the South Carolina Secretary of State.

13. Per the Articles of Organization for CIF2, David Field was the sole organizer of CIF2.

14. Per the Articles of Organization for CIF2, Davyd Field and Morey will manage CIF2.

15. On May 29, 2007, CIF2 was duly organized as a limited liability company under the laws of the State of South Carolina.

16. CIF2’s registered agent is Davyd Field of 925 Cleveland Street, # 27, Greenville, South Carolina, 29601.

17. Davyd Field is the son of Arthur Field.

18. On July 5, 2007, Morey stated that she has been an employee of CIF1 for “about seven years,” although, during those seven years, she was not employed by CIF1 for about one year.

New Plan of Financing Developed

19. In a letter dated May 23, 2007, Arthur Field informed the Division that CIF1 had retained Pfeiffer as its attorney.

20. In his May 23, 2007, letter to the Division, Arthur Field stated, Pfeiffer “is going to review the federal law and various exemptions therefrom including 77c(a)(11) and section [sic] 506. After completing his investigation, he will contact you and set up a meeting for us with your Division.”
21. On Tuesday, May 29, 2007, Arthur Field by telephone asked the Division for an appointment with the Division for Pfeiffer and Arthur Field to discuss a new company that Arthur Field said that he and Pfeiffer worked on over the weekend.
22. During this May 29, 2007, telephone conversation, Arthur Field stated to the Division that:
 - a. A new company (i.e., CIF2) had been created whose sole purpose was to borrow and lend money in South Carolina;
 - b. The old company (i.e., CIF1) would offer securities under Rule 506 of the Securities Act of 1933; and
 - c. All “disturbing loans” would remain in CIF1.
23. On May 30, 2007, CIF1, through its attorney Pfeiffer, stated in a letter to the Division that CIF1 had “formulated a plan for going forward that we believes [sic] not only complies with all applicable federal and state securities laws, and addresses all concerns of your department.”
24. In his May 30, 2007, letter to the Division, Pfeiffer stated that he wanted to meet with the Division “to discuss [CIF1’s] intentions going forward.”
25. In a letter to the Division dated June 7, 2007, about CIF1, Arthur Field stated the following:
 - a. CIF1 has “elected to issue \$30 Million of Notes pursuant to the exemption provided by Section [sic] 506 of the Securities Act of 1933.”

- b. CIF1 has “also assisted in the creation of [CIF2], which is applying for registration by qualification under Title 35 for issuance of \$30 Million of Series 2007 Senior Notes.”
- c. CIF2 “will use the same indenture as previously used by [CIF1] and CIF1 hereby assigns the legal opinion concerning the Note certificate issued by David Thomas, Esq. to [CIF2].”
- d. CIF2 will “act as an unaffiliated ‘sister’ company to [CIF1].”
- e. “All existing CIF1 Note holders will be offered a choice as their Notes mature. If they are accredited investors, they may elect to remain with the old CIF1 in whole or in part, purchase new CIF2 Notes in whole or in part, or redeem in whole or in part. If they are not accredited under Section [*sic*] 506, they will only be able to purchase CIF2 Notes or redeem in whole or in part.”
- f. “CIF2 will engage in only intrastate transactions. It will raise funds solely in South Carolina and lend funds herein solely secured by South Carolina property. It may purchase loans meeting these conditions from CIF1.”
- g. “Essentially, we are splitting CIF1 into two separate entities. We are leaving any of the items the Securities Division may consider ‘objectionable’ in the original entity with 506 exemption and will permit only ‘pristine’ items into the new entity. This should resolve all concerns in your Division. Registration should be virtually automatic.”
- h. “Advertising for CIF2 will be identical to the ones used for CIF1”
- i. “We hope to reassure Note holders of continuity of philosophy as we gradually receive repayment and possibly retire CIF1 some day in an orderly fashion and replace it, partially or totally, with CIF2.”

- j. “The nearly 90 day delay in registration [of CIF1] has significantly impeded CIF1’s ability to do orderly business Your assistance in reviewing and registering CIF2 as quickly as possible would be greatly appreciated.”

26. CIF1 is using CIF2 as an underwriter to raise funds for CIF1.

CIF1’s Offerings to Existing Note Holders and to Others

27. In a letter dated March 29, 2006, the Division informed CIF1 that its Series 2006 Senior Notes had been registered for sale in South Carolina and that this registration would expire one year from March 22, 2006.

28. On March 7, 2007, CIF1 filed a registration statement to register Series 2007 Senior Notes, but on April 2, 2007, the Division delayed effectiveness to this registration statement until at least July 20, 2007.

29. In a letter to the Division received on April 30, 2007, CIF1 through Arthur Field stated, “SC Code of Laws Section 35-1-202(15) permits an exemption for any transaction involving existing security holders provided no commission is earned. We have been operating in good faith pursuant to this exemption since March 22.”

30. CIF1 has renewed a Senior Note Series 2006 of at least one existing note holder by issuing a Senior Note Series 2007. Included in the newly issued Senior Note Series 2007 are the following statements:

a. “This is a Promissory Note and is offered only to qualified investors as defined by Securities Act of 1933 or those exempt under Title 35 of the S.C. Code.”

b. “By accepting this Note, Promisee [*sic*] represents it has received, is fully familiar with and is bound by the terms of the current Prospectus, incorporated herein by reference, and fully understands and accepts all risks associated with these Notes and relies solely on said Prospectus.”

- c. “Holder has represented to the Company it is an accredited investor as defined by Securities Act of 1933 and Company relies in good faith thereon. This offering has been registered as exempt from state and/or federal securities laws under Section 506 of the Securities Act of 1933”
 - d. “Certificates and transfer may be subject to S.C. Code Sec. 35-1-202 if Holder is not accredited.”
31. CIF1 has not provided the existing note holder referenced in the preceding paragraph with a copy of a 2007 prospectus; however, that note holder has a copy of CIF1’s prospectus for its Series 2006 Senior Notes.
32. Related to Arthur Field’s stated intent that CIF1 would issue notes pursuant to Rule 506 of the Securities Act of 1933, CIF1 filed with the Division on June 18, 2007, Form D, Notice of Sale of Securities Pursuant to Regulation D, and Form U-2, Uniform Consent to Service of Process. As part of CIF1’s Rule 506 filing:
- a. CIF1 listed on Form D the address of its executive offices and the business address of Arthur Field as 808 Powdersville Road, #15, Easley, South Carolina, 29642.
 - b. On Form D, CIF1 stated that Arthur Field was the only “General and/or Managing Partner” of CIF1 and “Beneficial Owner” who may vote or dispose of 10% or more of CIF1’s ownership interest.
 - c. On Form D, CIF1 stated that it is offering “Series 2007 Fixed Rate Notes” and that the aggregate offering price of these debt securities is \$30,000,000.
 - d. On Form D, CIF1 stated that it had already sold \$770,000 of debt securities to seven accredited investors.
 - e. Arthur Field signed Form D and Form U-2 as “Manager” of CIF1.

- f. On Form U-2, Uniform Consent to Service of Process, CIF1 requested that any notice, process, or pleadings be served upon Arthur Field by mail to him at 310 Thornblade Blvd., Greer, S.C., 29650.

CIF2's Application to Register \$30,000,000 of Securities

33. Related to Arthur Field's stated intent that CIF2 would issue notes pursuant to the intrastate exemption, CIF2 filed a registration statement with the Division, which the Division received on June 11, 2007, to register \$30,000,000 of Series 2007 Senior Notes to be offered in South Carolina.

- a. As CIF1 has done since approximately 1999, CIF2 seeks through this registration statement to issue securities, in the form of promissory notes, in South Carolina.

b. Regarding CIF2's address:

- i. As part of its registration statement, CIF2 listed its business address as 808 Powdersville Road, #15, Easley, South Carolina, 29642, on the following documents:

1. The cover letter to the Division dated June 7, 2007 to which its application to register \$30,000,000 in securities was attached;
2. Its Form U-1, Uniform Application to Register Securities; and
3. Its document titled "Registration By Qualification Responses."

- ii. On the cover page to Respondent's prospectus to offer up to \$30,000,000 of Series 2007 Senior Notes, CIF2 listed its address as 808 Powdersville Road, Easley, South Carolina, 29642. On page 2 of this prospectus, CIF2 stated that it has an office in office #15 at this address.

- iii. On a "Memo trans" form issued on or after June 7, 2007, by Greenville First Bank, N.A., CIF2's address is listed as 310 Thornblade Blvd., Greer, S.C., 29650.
- c. In the cover letter accompanying CIF2's "application to register \$30 Million in Series 2007 Senior Notes," Davyd Field stated the following:
 - i. "Please add to the above the letter from Senator David Thomas in support of the Senior Note."
 - ii. "It is our intention this entity will replace [CIF1] (which has elected to register under Section [sic] 506 with the S.E.C.)."
 - iii. "The form of advertisements used by the prior entity [i.e., CIF1] will be employed by the new entity [i.e., CIF2]."
 - iv. "Upon registration, those Note Holders in [CIF1] who are not accredited for '506' purposes will be invited to purchase Notes in the new entity."
 - v. "The new entity will engage in only South Carolina fund raising and lending and substantially all revenues will come from sources within South Carolina."
- d. Regarding CIF2's offering of securities:
 - i. On Form U-1, Uniform Application to Register Securities, CIF2 stated the following:
 - 1. CIF2's offering of "Senior Notes Series 2007" is in the amount of \$30,000,000.
 - 2. CIF will offer securities for sale to the public only in South Carolina.

- ii. In CIF2's prospectus, CIF2 stated that it intends to issue "Series 2007 Senior Notes" in the amount up to \$30,000,000.
- e. Regarding the ownership and management of CIF2:
- i. In the document titled "Registration By Qualification Responses," CIF2 identified Davyd Field and Morey as its managers.
 - ii. On June 4, 2007, Morey signed Form U-1 Part 2 as "MANAGER" of CIF2.
 - iii. Morey is an employee of CIF1, and she will continue to serve as an employee of CIF1 for a period of time even if the Division registers CIF2's \$30,000,000 offering.
 - iv. Pursuant to Article VI and Exhibit A of the Amended Operating Agreement and/or CIF2's prospectus:
 - 1. Davyd Field is a member/manager of CIF2 who has contributed \$100,000 for a 31% ownership interest in CIF2;
 - 2. Gary Malvern is a member of CIF2 who has contributed \$10 for a 2% ownership interest in CIF2;
 - 3. Morey is a member/manager of CIF2 who has contributed \$10 for a 5% ownership interest in CIF2;
 - 4. Tikal Trust of Greer, South Carolina, is a member of CIF2, which has contributed \$100,000 for a 31% ownership interest in CIF2; and
 - 5. Britannia Trust of Mauldin, South Carolina, is a member of CIF2, which has contributed \$10 for a 31% ownership interest in CIF2.

- f. Regarding CIF2's financial position:
- i. In the document titled "Registration By Qualification Responses," CIF2 stated that its equity as of May 31, 2007 was \$200,030.
 - ii. The above-referenced "Memo trans" form shows that a deposit of \$200,000 was made into CIF2's bank account at Greenville First Bank on June 7, 2007.
 - iii. CIF2's Balance Sheet as of June 7, 2007, shows an asset titled "Gnvl Frst Fund Transfer" of \$200,000 and equity of \$200,000. On this Balance Sheet, CIF2 split the equity evenly between "Partner One Equity" and "Partner Two Equity."
- g. According to CIF2's prospectus:
- i. "Ashley Morey has been employed with [CIF1] since 2000."
 - ii. "The Britannia Trust is a South Carolina entity organized for the benefit of the minors Claire Pfeiffer and Henry Pfeiffer."
 - iii. "The Tikal Trust is a South Carolina entity organized for the benefit of the minor Allyson Field, who is a resident of Greer"
 - iv. CIF2 identified Arthur Field, Cosimo, Krondor Trading Co., LLC ("Krondor"), CIF TC, LLC, Trazom, LLC ("Trazom"), He Will Provide, LLC, Blenheim Properties, LLC, and other entities as related parties.
 - v. CIF2 stated that Malvern has a conflict of interest because he serves on the board of the Greenville Pops Orchestra, Inc., with Arthur Field.
 - vi. CIF2 stated that Arthur Field has the following conflicts of interest:
 1. He is manager of CIF1 and CIF TC, LLC;
 2. He is co-manager of Cosimo through his ownership of Krondor;

3. He is manager of Trazom;
 4. He is an “indirect member” of Aladdin’s Café & Grill, LLC, and He Will Provide, LLC; and
 5. He is a “former member” of CIF1’s major debtor.
- vii. The “Series 2007 Notes” are “unsecured obligations of” CIF2 “having maturities from 1 to 5 years.”
 - viii. “The annual interest rate payable on the Series 2007 Note is fixed by the Company on the date of purchase and remains fixed thereafter.”
 - ix. “The validity of the Notes offered by this version of the prospectus has been passed upon for the Company by the law firm of David L. Thomas of Greenville, South Carolina in 2007.”
 - h. The specimen of CIF2’s Senior Note Series 2007 in its registration statement, other than the name of the issuer, dates, and titles, is substantially the same as CIF1’s specimen of its Senior Note Series 2007 in the registration statement that was the subject matter of the Division’s May 11, 2007, Notice.
34. Regarding exemptions from registration:
- a. On Form U-1, Uniform Application to Register Securities, CIF2 stated that it has not filed a registration statement with the SEC.
 - b. In the Registration and Regulation section of its prospectus, CIF2 stated that its management believes that its securities are “exempt from registration with the [SEC], under one or more sections of the Securities Act of 1933, as amended, including Section 3(a)(11) thereof.”

- c. In the Registration part of the Risk and Special Factors to Be Considered section of its prospectus, CIF2 stated that:
 - i. It will comply with the requirements of the intrastate exemption and the safe harbor provisions in Rule 147 under the Securities Act of 1933, and
 - ii. It will not seek a no-action letter from the SEC regarding “such automatic exemption.”
 - d. CIF2 has not stated in its registration statement or in any other communication with the Division that it qualifies for any exemption other than the intrastate exemption and any Rule 147 exemption.
 - e. CIF2 has not stated in its registration statement or in any other communication with the Division that, if its offering is integrated with CIF1’s offering, the integrated offering would qualify for any exemption from registration.
35. CIF2 has not made any representation or provided any documentation in its registration statement or otherwise that investors in CIF2 or investors in CIF1 are sophisticated investors (i.e., that they are capable of evaluating investments) or that they have access to the kind of information that would be disclosed by the registration of an integrated offering.

Division’s Review of CIF2’s Registration Statement

36. On July 5, 2007, the Division examined the following persons under oath: Pfeiffer, Morey, and Davyd Field.
37. On July 10, 2007, the Division mailed a letter to Pfeiffer, CIF2’s attorney, informing CIF2 that the Division had determined that CIF2’s registration statement was not complete in all material respects and that the effectiveness of its registration statement was delayed for

not more than ninety days from July 11, 2007, to October 9, 2007, subject to an extension of not more than thirty additional days to November 8, 2007.

38. In its July 10, 2007, letter to CIF2, the Division provided eight comments about CIF2's registration statement and stated, among other things, that CIF2 needed to prove to the Division that the offerings of CIF1 and CIF2 should not be integrated.
39. On July 31, 2007, the Division received a response from Pfeiffer which states, "We disagree with the Division's determination that the offering proposed by [CIF2] should be integrated with any offering, current or past, of [CIF1]."
40. On August 10, 2007, the Division mailed a letter to Pfeiffer inviting CIF2 "to submit reasons, with citations, why CIF2's offering should not be integrated with CIF1's offering."

CIF1 and CIF2 Considered to Be One Issuer

41. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.
42. Arthur Field has direct control of CIF1 and has direct or indirect control of CIF2 based on the following:
 - a. Based on Arthur Field's telephone call to the Division on May 29, 2007, Pfeiffer's letter to the Division dated May 30, 2007, and Arthur Field's letter to the Division dated June 7, 2007, Arthur Field developed, or substantially contributed to the development of, the new plan of financing that included the creation of CIF2 and the "splitting [of] CIF1 into two separate entities" and by letter and telephone directly addressed with the Division this new plan of financing and the registration of CIF2's securities.

- b. When asked by the Division who approached Pfeiffer or the Britannia Trust about becoming a member of CIF2, Pfeiffer stated, “Dr. Field and I discussed it first. I mean the whole genesis of [CIF2] was – you know, grew out of [CIF1] and [CIF1]’s decision to cease issuing securities under the . . . intrastate exemption, . . . and the issue that that created was that there was an inability then to service [CIF1]’s unaccredited investor note holders, which created a business opportunity for a new company . . ., and [Arthur Field and I] discussed it, and we discussed, you know, many options, could [CIF1] simply divide into divisions, could Arthur [Field] own two separate companies, you know, what could happen.”
- c. Pfeiffer stated that Arthur Field approached Davyd Field and Morey about CIF2 and “tak[ing] on this business opportunity and run[ning] with it.”
- d. Based on his statements, Arthur Field knows the financing and advertising plans of CIF2, and in a letter dated June 7, 2007, to the Division about CIF1 Arthur Field requested the Division’s “assistance in reviewing and registering CIF2 as quickly as possible.”
- e. Davyd Field stated, Arthur Field “gave me a copy of [CIF1’s prospectus], and I modeled much of what’s written in [CIF2’s] prospectus on [CIF1’s prospectus].”
- f. When asked by the Division who prepared CIF2’s prospectus, Pfeiffer stated, “Primarily, Dr. Field did. It’s essentially an edit of [CIF1]’s intrastate exemption prospectus”
- g. When asked by the Division who wrote CIF2’s Amended Operating Agreement, Pfeiffer stated, “I believe Dr. Field authored this document”
- h. Morey stated that Arthur Field gave her CIF2’s Amended Operating Agreement to sign and that Arthur Field is “manager of [CIF1]” and is her current boss.

- i. Morey stated that she received CIF2's prospectus "[t]hrough Arthur [Field]."
 - j. When asked who told her that there were going to be two companies (i.e., CIF1 and CIF2), Morey stated, "I talked a little bit with Arthur [Field] about it, and Davyd [Field] and Scott [Pfeiffer]."
 - k. When asked who asked her if she wanted to become a manager or member of CIF2, Morey stated, "I spoke with Arthur [Field] about that, Arthur Field."
 - l. Davyd Field stated that he is the trustee of the Tikal Trust and that the two beneficiaries of the Tikal Trust are Davyd Field and Allison Field, two children of Arthur Field.
 - m. The bank that CIF2 uses to hold its checking accounts reports CIF2's address as the same address at which Arthur Field, the owner and manager of CIF, requests that process concerning CIF1 be served.
 - n. Davyd Field and Morey stated that CIF2 may use Cosimo, 50% of which is controlled by Arthur Field, to act as a re-lender for CIF2.
43. CIF1 and CIF2 are related parties.
- a. In his letter to the Division dated June 7, 2007, Arthur Field called CIF2 a "sister" company to CIF1.
 - b. Davyd Field, manager and member of CIF2, is the son of Arthur Field, manager and member of CIF1.
 - c. Morey, manager and member of CIF2, is and will continue to be an employee of CIF1.
 - d. CIF1, CIF2, and Arthur Field are affiliates.

44. Based on Arthur Field's June 7, 2007, statement to the Division that CIF1 "hope[s] to reassure [its] Note holders of a continuity of philosophy," CIF1 expects that the creation of and issuance of notes by CIF2 will help CIF1 and its securities holders.
45. Morey stated to the Division that for approximately a year she would be employed by both CIF1 and CIF2 and that she "assume[s]" she would be compensated by both companies.
46. Although Arthur Field, who is an attorney, has some experience in securities registration and securities laws, the managers of CIF2 do not have any significant experience with or knowledge of securities registration or securities laws.
- a. When asked by the Division if she knew whether CIF2 qualifies for any federal exemption from registration, Morey stated, "I don't really knows [*sic*] those rules, or terms, the codes."
 - b. Davyd Field stated that he has "[v]ery little, if any," experience with securities registration and securities laws.
47. Arthur Field is Davyd Field's father, and Arthur Field is, and is expected to continue to be, for up to another year, Morey's boss at CIF1.
48. Davyd Field stated that he met Malvern through Arthur Field, that in 2005 or 2006 the three of them discussed CIF1's business model, and that Malvern's knowledge of the business came from his experience with Arthur Field and Davyd Field.
49. CIF2's principal business location is CIF1's principal business location or may in the future be "next door" to CIF1's principal business location.
- a. CIF1 and CIF2 use the same address, including the same office number at that address, and telephone.
 - i. As stated earlier, CIF1, CIF2, and Arthur Field state that 808 Powdersville Road, #15, Easley, South Carolina, 29642, is their address.

- ii. When asked by the Division where CIF2's office is, Morey stated, "Still at the same address as [CIF1]."
 - iii. Morey also stated that as of July 5, 2007, CIF2 was not incurring any rent or phone expenses.
 - iv. On CIF2's Form U-1, Uniform Application to Register Securities, it listed CIF1's telephone number as the number at which communications regarding CIF2's application may be sent.
 - v. When the Division called this telephone number, the person who answered the telephone represented that she was answering the telephone for CIF1.
- b. In the future, CIF2's office may be adjacent to CF1's office
- i. Morey stated that in the future CIF2 may use the "[s]ame location [as CIF1], just different offices."
 - ii. Davyd Field stated that CIF1's non-accredited investors may be introduced "next door" to CIF2.
50. CIF2 has similar systems and procedures as CIF1, as demonstrated by CIF2's use of CIF1's prospectus to create its own prospectus, the similarity of the specimen notes that each company submitted to the Division, and the use of the same advertising materials.
51. The same entity may service loans for both CIF1 and CIF2.
- a. Davyd Field and Morey stated to the Division that Cosimo, which currently acts as a re-lender for CIF1, might also act as a re-lender for CIF2.
 - b. Arthur Field stated on March 13, 2007, to the Division that he does not service the loans that CIF1 makes through Cosimo because Cosimo services those loans.
52. The form and content of CIF2's advertisements will be the same as the advertisements previously used by CIF1.

53. CIF2 has attempted to use the same legal opinion to register its securities that an attorney issued to CIF1 regarding registration of the securities on which the Division issued its May 11, 2007, Notice against CIF1.
54. CIF2 has or will use a similar prospectus (i.e., offering brochure), a similar note, and the same type of security as CIF1 has or will use.
55. CIF2 intends to use the same promissory notes, including similar terms and similar interest rates, as are the outstanding notes of CIF1.
56. Arthur Field stated that CIF2 “will use the same indenture as previously used by [CIF1].”
57. The rights, interest, and obligations of CIF2’s note holders are the same as the rights, interests, and obligations of CIF1’s current note holders.
58. The offerings of CIF1 and CIF2 are interdependent; therefore, they are part of a single plan of financing.
 - a. As demonstrated above, Arthur Field developed, or substantially developed, the new plan of financing that includes the separate \$30,000,000 offerings of CIF1 and CIF2.
 - b. Proceeds from the sale of securities by CIF1 and CIF2 will be used to finance the operations of the other company.
 - i. CIF1’s note holders cannot invest the funds that they have invested in CIF1 until CIF1 pays these investors when their notes mature. When asked by the Division how CIF1 investors may invest in securities of CIF2, Davyd Field stated, “[U]pon receiving funds back from [CIF1], they would be provided with an opportunity and introduced next door to [CIF2].”

- ii. CIF1 may only be able pay off its investors when their notes mature if CIF2 is able to raise funds from its offering of securities.
 - 1. In CIF2's prospectus, CIF2 says that proceeds of its offerings will be used partially for "redemption of maturing prior Senior Notes," and, because CIF2 has no prior Senior Notes, CIF2 must be referencing CIF1's outstanding notes.
 - 2. Some of the proceeds from CIF2's offering of securities will be paid directly or indirectly to CIF1, because CIF2 has a "right" and is expected to purchase existing notes receivable held by CIF1 or to refinance the notes receivable held by CIF1.
- c. Morey stated that no cash may change hands and that cash and notes will merely "transfer" when investors in CIF1 become investors in CIF2.
- d. When asked about CIF1's note holders, Morey stated, "As these clients' accounts mature, we would – if they're – you know, we would give them the option, I guess, to come to [CIF2] or else we wouldn't be able to have them as clients, right, because that's why we're trying to create [CIF2]"
- e. Davyd Field stated that the "changes in [CIF1] will provide an opportunity for some of the unaccredited investors to . . . invest with [CIF2]."
- f. When asked by the Division how CIF1's investors would be introduced to CIF2, Davyd Field stated that he hoped that CIF1 "will inform their non-accredited investors of another opportunity."
- g. When asked by the Division why CIF2 was created, Morey stated, "We are trying to accommodate our current clients, South Carolina residents, trying to continue

to accommodate them like we have for the past several years through that company.”

h. CIF1 and CIF2 will likely share office space or be located “next door” to each other.

59. Regarding CIF2’s notes, CIF1 and CIF2 have integrated selling efforts, based on the following facts:

- a. CIF1 is expected to introduce its non-accredited investors to CIF2.
- b. In his June 7, 2007, letter to the Division, Arthur Field stated that all existing CIF1 Note holders would be offered a choice as their Notes mature to purchase new CIF2 Notes.
- c. CIF1 and CIF2 may transfer investors and moneys between the two companies.
- d. CIF1 and CIF2 may either share office space or be located adjacent to each other for the convenience of the investors.
- e. At least for a period of time, both CIF1 and CIF2 will employ Morey.

60. Contractual relations may exist between CIF1 and CIF2.

- a. CIF1 and CIF2 will employ Morey at the same time.
- b. CIF2 is currently using CIF1’s office and telephone.
- c. In the future, CIF1 and CIF2 may share office space.
- d. CIF1 may introduce its investors to CIF2.
- e. CIF1 may “transfer” note holders’ cash and/or notes to CIF2.
- f. CIF2 may purchase or refinance notes receivable held by CIF1.

61. CIF1 and CIF2 may engage in transactions between the two companies, including, but not limited to, CIF2’s purchase or refinance of CIF1’s notes receivable, the transfer of investors between CIF1 and CIF2, and the allocation of Morey’s time, salary, and benefits.

62. CIF1 and CIF2 may share some expenses, including, but not limited to, rent, telephone, and Morey's salary and benefits.
63. The economic success of CIF1 and CIF2 is substantially dependent on Arthur Field or CIF1.
- a. In its prospectus, CIF2 makes numerous references to "prior history" and "prior experience, which can only refer to CIF1's prior history and experience.
 - b. Arthur Field, not Davyd Field and Morey, has experience in securities registration and securities laws.
 - c. CIF2 hopes to get many of CIF1's note holders to invest in CIF2; however, those note holders have likely been relying on the experience of Arthur Field.
64. Based on the above, the Division determines that CIF1 and CIF2 are one issuer for the purposes of analyzing whether the two offerings should be integrated.

Integration of the Offerings of CIF1 and CIF2

65. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.
66. CIF1's and CIF2's offerings are part of the same plan of financing.
- a. The plan to create CIF2 was developed, or substantially developed, by Arthur Field after the Division issued its Notice to deny CIF1's registration statement.
 - b. CIF1 filed its Form D and CIF2 filed its registration statement within a few days of each other.
 - c. Arthur Field told the Division that CIF2's registration should be "virtually automatic" and asked for the Division's "assistance in reviewing and registering CIF2 as quickly as possible."

- d. Proceeds from the sale of notes in CIF1 and CIF2 will be used to finance the other entity.
- e. Notes held by investors in CIF1 and cash paid to CIF1 by investors in CIF1 will be “transferred” from CIF1 to CIF2.
- f. Arthur Field stated that CIF2 will “reassure [CIF1’s] Note holders of a continuity of philosophy.”
- g. Morey stated that CIF2 was created to accommodate CIF1’s current investors and to be able to keep CIF1’s investors as clients.
- h. In April 2007, CIF1 filed a prospectus with the Division to offer \$50,000,000 in promissory notes to finance its intrastate and interstate activities, while in the two current offerings totaling \$60,000,000 CIF1 finances the interstate activities and CIF2 finances the intrastate activities.
- i. CIF2 is seeking to use substantially the same prospectus as CIF1 uses.
- j. In its prospectus, CIF2 makes numerous references to “prior history” and “prior experience,” which can only refer to CIF1’s prior history and experience.
- k. In CIF2’s prospectus, CIF2 states, “The Company may purchase loans from [CIF1].”
- l. Davyd Field stated that CIF2 has a “right” to purchase or refinance CIF1’s notes receivable.
- m. In CIF2’s prospectus, CIF2 says that proceeds of its offering will be used partially for “redemption of maturing prior Senior Notes,” and, because CIF2 has no prior Senior Notes, CIF2 must be referencing CIF1’s outstanding notes.

- n. Davyd Field stated, "Upon registration [of CIF2's notes], those Note Holders in [CIF1] who are not accredited for '506' purposes will be invited to purchase Notes in [CIF2]."
 - o. CIF1 and CIF2 are using the same address and telephone number on documents filed with the Division.
 - p. Arthur Field called CIF2 a "sister" company to CIF1.
67. The offerings by CIF1 and CIF2 have the same business purpose.
- a. The purpose of the offerings by CIF1 and CIF2 is to support and finance CIF1.
 - b. CIF1 says on its Form D that its Rule 506 offering is for "Real Estate Development Lending," and CIF2 says in the Plain English Explanation of its prospectus, "[W]e lend a majority of our funds against real estate."
 - c. CIF1 and CIF2 are engaged in the business of raising funds by the issuance of securities to investors and then lending those funds to borrowers.
 - d. The offerings by CIF2 and CIF1 accomplish substantially the same purpose and may raise approximately the same amount of proceeds as the withdrawn offering of CIF1 which was the subject of the Division's May 11, 2007, Notice.
 - i. One of the purposes of CIF1's offering for which the Division issued its May 11, 2007, Notice was to offer "[u]p to \$50,000,000 worth of unsubordinated Senior Notes with a fixed annual rate of interest and a maturity date of not less than 12 months from the date of issue."
 - ii. Under the new plan of financing developed by Arthur Field and Pfeiffer:
 - 1. Through its new offer, CIF1 is offering up to \$30,000,000 worth of unsubordinated Fixed Rate Notes.

2. CIF2 seeks to offer “[u]p to \$30,000,000 worth of Senior Notes with a fixed annual interest rate and a maturity date of not less than 12 months from the date of issue.” These notes are also unsubordinated.
 - c. As demonstrated above, Arthur Field and CIF1 were integrally involved in developing the idea to create CIF2 and in the registration of CIF2’s securities.
 - f. As the separate offerings by CIF1 have done in the past, the two separate offerings of CIF1 and CIF2 will continue to benefit Arthur Field and his family members.
68. CIF1 and CIF2 will issue their securities at the same time.
- a. CIF1 filed its Form D with the Division on June 18, 2007, while CIF2 filed its registration statement with the Division on June 11, 2007.
 - b. The sales of the two company’s securities will be proximate in time.
 - i. CIF1 has already begun offering and selling its securities and is likely to continue until it sells up to \$30,000,000 in securities.
 - ii. CIF2 wants to offer and sell its securities as soon as possible and will continue selling its securities during the next year, if registered, up to \$30,000,000 in securities.
 - c. As stated earlier:
 - i. The timing of the sales of each company’s securities is dependent on the sale of the other company’s securities, so the sales of securities need to be made at approximately the same time;
 - ii. The proceeds from the sale of the notes in CIF1 and CIF2 will be used to finance the other entity; and

iii. Notes held by investors in CIF1 and cash paid to CIF1 by investors will be “transfer[red]” to CIF2.

69. CIF1 and CIF2 will issue the same securities.

- a. Each company has or will issue securities in the form of promissory notes.
- b. Each company has or will offer fixed-rate senior notes at similar rates of interest.
- c. The term of CIF2’s notes will be from one to five years, which is the same term that CIF1 has used on its outstanding notes.
- d. The offerings are financially interdependent.
- e. Notes held by investors in CIF1 and cash paid to CIF1 by investors will be “transfer[red]” to CIF2.

70. CIF1 and CIF2 will receive the same consideration (i.e., cash or an existing note of the issuer) from investors for their securities.

71. The Division finds sufficient evidence that the application of each of the five factors used to determine whether offers and sales should be integrated indicate that the offerings by CIF1 and CIF2 should be integrated.

72. Therefore, CIF2’s intrastate offering should be integrated with CIF1’s Rule 506 offering.

73. Policy considerations support the Division’s determination that CIF2’s intrastate offering should be integrated with CIF1’s Rule 506 offering.

- a. The separate offerings of CIF1 and CIF2 are part of a plan or scheme to evade federal registration, as evidenced by, among other facts, the following:
 - i. CIF2 was organized in South Carolina approximately eighteen days after the Division issued its Notice to deny CIF1’s \$50,000,000 offering;
 - ii. Within approximately five weeks after the Division issued its Notice to deny CIF1’s \$50,000,000 offering, CIF1 and CIF2 notified the Division of

their intent to issue securities under the newly developed plan of financing;

- iii. Arthur Field substantially developed the new plan of financing that included CIF2, as described in paragraphs 19 through 26;
- iv. Arthur Field prepared or assisted in the preparation of various CIF2 documents including CIF2's organization documents and portions of CIF2's registration statement; and
- v. Arthur Field directly or indirectly controls CIF2.

b. Altering the corporate structure and business operations so that two entities satisfy a federal exemption from registration does not prevent integration.

c. Registration protects the public, CIF1's offering is not registered and, as the offerings are currently presented, current investors in CIF1 and potential investors in CIF1 and CIF2 will not know the risk of not integrating the offerings. See infra ¶¶ 83-84, 94, 96-105.

d. The integration of the two offerings significantly enhances investor protection.

74. As demonstrated above, CIF2 has not met its burden to prove that its offering is exempt from federal registration.

75. Accordingly, CIF2's securities are not exempt from federal registration.

CIF2's Registration Statement Is Incomplete in a Material Respect

76. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.

77. CIF2 did not submit a consent to service of process complying with Section 35-1-611.

78. CIF2 did not submit an audited Balance Sheet, Statement of Income, Statement of Cash Flows, and an accompanying auditor's opinion to these financial statements.
79. CIF did not submit a signed opinion of counsel. Although CIF1 "assign[ed] the legal opinion" of David Thomas related to CIF1's previously proposed, but now withdrawn, securities to CIF2, that legal opinion, which was directed to and about CIF1, does not satisfy the requirement that CIF2 furnish an opinion regarding the legality of the securities sought to be registered by CIF2.
80. CIF2 did not submit signed consents of its attorney and auditor.
81. CIF2 did not submit any pamphlet, circular, form letter, advertisement, or other sales literature (other than the prospectus) intended to be used in connection with the offering.
82. Because each of the above items that CIF2 did not submit are required to be filed by South Carolina law, each of these items is considered information needed by an investor, making each item a material component of any registration statement.
83. CIF2 has failed to disclose its contingent liability arising from its failure to register its securities with the SEC, thus making its prospectus further incomplete in a material respect.
84. This contingent liability would be important to investors making it material to CIF2's registration statement.
85. Therefore, CIF2's registration statement is incomplete in material respects.
86. CIF2's prospectus is deceptive because it is incomplete. However, even if the items mentioned in paragraphs 77 through 84 were included, the disclosure document would still be incomplete because it does not have the necessary full and fair disclosures of all material facts to investors.

CIF2's Registration Statement Will Work or Tend to Work a Fraud Upon Purchasers or Would So Operate Because It Should Be Integrated

87. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.
88. In CIF2's prospectus, CIF2 states, "These securities are believed by management, upon the advice of counsel, to be exempt from registration with the Securities and Exchange Commission, under one or more sections of the Securities Act of 1933, as amended, including Section 3(a)(11) thereof."
89. CIF2 also stated in the Risk Factors section of its prospectus, "The Company believes in good faith and in reliance on counsel it is and will be exempt from federal registration. It will perform all acts to remain in compliance with the exemption for intrastate commerce provided under Section 77c(a)(11) [sic] and the safe harbor provisions (Rule 147) of the Securities Act of 1933. However, the Company has not sought, does not intend to seek, is not required to seek, nor has it received confirmation of such automatic exemption."
90. CIF2 has not provided to the Division a no-action letter from the SEC saying that CIF2 is exempt from registration because its offering should not be integrated with CIF1's offering or because its offering satisfied the requirements of the intrastate exemption.
91. CIF2 has not filed a registration statement with the SEC regarding its securities.
92. The Division has determined as stated above that CIF2's offering must be integrated with CIF1's offering.
93. When CIF2's offering is integrated with CIF1's offering, the integrated offering would not qualify for the intrastate exemption because CIF1 does not conduct a predominant amount of its business in South Carolina and would not satisfy the requirements of the intrastate exemption, and the integrated offering would not qualify for the Rule 506

exemption because more than thirty-five investors who are not accredited would likely have purchased securities.

94. By offering its securities without federal registration, CIF2 may be subject to various claims and liabilities.

95. Therefore, by offering its securities without federal registration, CIF2's offering would work a fraud or would tend to work a fraud upon purchasers of its securities or would so operate.

CIF2's Registration Statement Will Work or Tend to Work a Fraud Upon Purchasers or Would So Operate and Is Incomplete in Material Respects Because It Does Not Describe the Risk to Investors in CIF2 Related to CIF1

96. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.

97. Notes held by investors in CIF1 and cash paid to CIF1 by investors will be "transfer[red]" to CIF2.

98. CIF2 has the "right" to purchase or refinance notes receivable held by CIF1; therefore, proceeds from CIF2's offering will be paid to CIF1, and investors in CIF2 will be investors in the assets held by CIF1.

99. CIF1's registration status, financial position and cash flow, CIF1's and Arthur Field's involvement in organizing CIF2 and attempting to register its securities, other facts about CIF1, the "transfer" of investors from CIF1 to CIF2, and expected transactions between CIF1 and CIF2 are material to CIF2's registration statement.

100. Because the value of the notes held by CIF1's investors may be less than the amount those investors paid to CIF1, these investors upon being "transferred" to CIF2 may receive notes in CIF2 that have a principal value greater than the value of the CIF1 notes held by those investors.

101. Other investors in CIF2, who are not “transfer[red]” from CIF1 to CIF2, will purchase notes in CIF2 by paying cash to CIF2 for those notes in CIF2.
102. Therefore, the investors who pay cash for their notes in CIF2 may be harmed because the “transferred” investors may not be paying valid consideration for their notes in CIF1 and may receive notes in CIF2 that have a principal value greater than the value of the “transferred” notes in CIF1.
103. CIF2 did not disclose this risk in its registration statement.
104. CIF2 did not adequately disclose how CIF2 will work with CIF1 to “transfer” investors from CIF1 to CIF2, including, but not limited to, the following:
- a. The registration status of CIF1’s securities, including, but not limited to, the Notice issued by the Division on May 11, 2007.
 - b. CIF1’s financial position and cash flow, the value of its assets, and the value of its notes held by investors.
 - c. Material risk factors regarding the “transfer” and relationship between CIF1 and CIF2.
 - d. CIF1’s and Arthur Field’s involvement in the preparation of CIF2’s registration statement and the process of registering CIF2’s securities.
 - e. Investors in CIF2 are investors in the assets of CIF1.
105. Therefore, CIF2’s offering works a fraud or tends to work a fraud upon purchasers of its securities or would so operate and is incomplete in material respects.

Securities in the Form of Options

106. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.

107. As stated above, Arthur Field wrote in a letter to the Division dated June 7, 2007, “All existing CIF1 Note holders will be offered a choice as their Notes mature. If they are accredited investors, they may elect to remain with the old CIF1 in whole or in part, purchase new CIF2 Notes in whole or in part, or redeem in whole or in part. If they are not accredited under Section [sic] 506, they will only be able to purchase CIF2 Notes or redeem in whole or in part.”
108. Morey referred to this “choice” as an “option” when she stated that “we would give [CIF1’s note holders] the option . . . to come to [CIF2].”
109. Davyd Field referred to this “choice” as an “opportunity” when he stated that the “changes in [CIF1] will provide an opportunity for some of [CIF1’s] unaccredited investors to . . . invest with [CIF2].”
110. CIF1 has created and given new rights to its Note holders through this “choice,” “option,” and “opportunity.”
111. In its registration statement, CIF2 does not refer to this “choice,” “option,” or “opportunity” as a security.
112. This “choice . . . to purchase new CIF2 Notes” or “to remain with old CIF1,” this “option,” or this “opportunity” are securities being offered to CIF1’s investors.
113. CIF1 is no longer the same as it was represented to be when investors purchased notes in CIF1 under an effective registration statement filed with the Division because of, among other facts, the following:
- a. CIF1 has been spilt into two entities.
 - b. CIF1 did not satisfy the requirements for the intrastate exemption.
 - c. CIF1’s financial position and cash flow has deteriorated between December 31, 2006, and June 30, 2007.

- d. CIF1 withdrew its registration statement to register Series 2007 Senior Notes in an amount up to \$50,000,000.
 - e. CIF1 has now elected to issue notes pursuant to federal Rule 506.
114. Because of these changes in CIF1, there were material changes in the economic position of CIF1. Accordingly, CIF1's investors have given value in relation to CIF1's offer of this new security.
115. CIF1's offer of these new securities for value to CIF1's investors constitutes a sale of securities pursuant to the Securities Act of 1933.
116. These securities are a material component of the new plan of financing, as described above, that involves both CIF1 and CIF2.
117. The registration or exemption status of this security and any risk of not registering this security is a material fact that investors in CIF2 or those investors that "remain" with CIF1 need to know.
118. Neither CIF1 nor CIF2 has filed a registration statement to register these securities nor has either entity claimed an exemption from registration regarding these securities.
119. CIF2's registration statement is incomplete in a material respect because CIF2 did not disclose that this "choice," "option," and "opportunity" is a security, did not disclose the registration or exemption status of this security, and did not disclose the risk of not registering this security.

Public Interest

120. The Division incorporates by reference the factual allegations in paragraphs 1 through 40.
121. The proposed prospectus is deceptive because it is incomplete. However, even if the items mentioned in paragraphs 77 through 84 were included, the disclosure document would

still be incomplete because it does not have the necessary full and fair disclosures of all material facts to investors.

122. Based on the above-stated facts, it is in the public interest to deny the effectiveness of Respondent's registration statement.

APPLICABLE LAW

Transactions Exempt from Registration Pursuant to Federal Law

123. Pursuant to 15 U.S.C. § 77e(a), unless a registration statement is in effect for a security, it is unlawful for a person to communicate through interstate commerce or the mails to sell such security through the use of any prospectus or otherwise or to carry or cause to carry through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale.

124. Pursuant to 15 U.S.C. § 77d(2), the provisions of 15 U.S.C. § 77e do not apply to transactions by an issuer not involving any public offering.

125. Pursuant to 17 C.F.R. § 230.501(g) and 15 U.S.C. 77b(a)(4), the term "issuer" generally means every person who issues or proposes to issue any security.

126. Pursuant to 17 C.F.R. § 230.506(a), offers and sales of securities by an issuer that satisfy the conditions in paragraph (b) of this section shall be deemed to be transactions not involving any public offering within the meaning of 15 U.S.C. § 77d(2).

127. Pursuant to 17 C.F.R. § 230.506(b), a Rule 506 offering must meet the following conditions:

- a. Offers and sales must satisfy all terms and conditions of 17 C.F.R. §§ 230.501 and 230.502.

- b. There are no more than or the issuer reasonably believes that there are no more than thirty-five purchasers of securities from the issuer in any offering under this section.
- c. Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

128. Pursuant to 17 C.F.R. § 230.502, the following conditions shall be applicable to offers and sales made under Regulation D:

- a. All sales that are part of the same Regulation D offering (i.e., are considered integrated) must meet all of the terms and conditions of Regulation D. Offers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of a Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under Regulation D. The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under Regulation D:
 - i. Whether the sales are part of a single plan of financing;
 - ii. Whether the sales involve issuance of the same class of securities;
 - iii. Whether the sales have been made at or about the same time;
 - iv. Whether the same type of consideration is being received; and

- v. Whether the sales are made for the same general purpose.
- b. If the issuer sells securities under Rule 506 to any purchaser who is not an accredited investor, the issuer shall furnish required information to such purchaser a reasonable time prior to sale.
- c. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising.
- d. Securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under 15 U.S.C. § 77d(2) and cannot be resold without registration under the Securities Act of 1933 or an exception therefrom.

129. Pursuant to 17 C.F.R. §§ 230.501, definitions and rules, including, but not limited to, the following apply:

- a. Accredited investor shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
 - i. Any director, executive officer, or general partner of the issuer of the securities being offered or sold;
 - ii. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000; and
 - iii. Other categories listed in 17 C.F.R. § 230.501(a).
- b. An affiliate of, or a person affiliated with, a specified person shall mean a person that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- c. For purposes of the calculation of the number of purchasers, the following shall apply:

- i. The following purchasers shall be excluded:
 1. Any relative, spouse, or relative of the spouse of the purchaser who has the same principal residence as the purchaser;
 2. Any trust or estate in which a purchaser and any of the persons related to him collectively has more than fifty percent of the beneficial interest;
 3. Any corporation or other organization of which a purchaser and any of the persons related to him collectively are beneficial owners of more than fifty-one percent of the equity securities or equity interests; and.
 4. Any accredited investor.
 - ii. A corporation, partnership, or other entity shall be counted as one purchaser.
 - iii. A non-contributory employee benefit plan shall be counted as one purchaser when the trustee makes all investment decisions for the plan.
- d. For purposes of the term “issuer,” the definition of the term “issuer” in 15 U.S.C. 77d(2) shall apply.

Federal Intrastate Exemption from Registration

130. Pursuant to 17 C.F.R. § 230.147(a), offers, offers to sell, offers for sale, and sales by an issuer of its securities made in accordance with all of the terms and conditions of this rule shall be deemed to be part of an issue offered and sold only to persons resident within a single state where the issuer is a person resident and doing business with such state, within the meaning of 15 U.S.C. § 77c(a)(11).

131. Pursuant to 17 C.F.R. § 230.147(c)(2), the issuer shall be deemed to be doing business within a state if:

- a. The issuer derives at least 80% of its consolidated revenue from the operation of a business or of real property located in such state or from the rendering of services within such state;
- b. The issuer had at the end of its most recent semi-annual fiscal period prior to the first offer of any part of the issue, at least 80% of its consolidated assets located within such state;
- c. The issuer intends to use and uses at least 80% of the net proceeds to the issuer from sales made pursuant to this rule in connection with the operation of a business or of real estate, the purchase of real property located in, or the rendering of services within such state; and
- d. The principal office of the issuer is located within such state.

Issuer Has Burden of Proof

132. Pursuant to S.C. Code Ann. § 35-1-503(a), the issuer of securities has the burden of proving the applicability of claimed exemptions.

133. Federal law also imposes on the issuer the burden of proving the applicability of an exemption to securities laws. See Securities and Exch. Comm'n v. Ralston Purina Co., 346 U.S. 119, 126 (1953).

Registration By Qualification in South Carolina

134. Pursuant to S.C. Code Ann. § 35-1-304(a), a security may be registered by qualification under the Act.

135. Pursuant to S.C. Code Ann. § 35-1-304(b), a registration statement must contain the following:
- a. Information or records specified in Section 35-1-305.
 - b. A consent to service of process complying with Section 35-1-611.
 - c. Other information if required by rule adopted under the Act.
136. Pursuant to S.C. Reg. § 13-302, as a condition of registration, a registration statement must contain the information listed in Sections 35-1-304(b)(1) through (18).
137. Pursuant to S.C. Code Ann. § 35-1-304(b)(13), (15), (16), (17), and (18), a registration statement under this section must contain:
- a. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature.
 - b. A signed opinion of counsel concerning the legality of the securities being registered.
 - c. A signed consent from the accountant about the use of the audited financial statements in connection with the registration statement and a signed consent from the attorney about the use of his opinion;
 - d. A balance sheet and statements of income and cash flows of the issuer; and
 - e. Any additional information or records required by rules adopted or order issued under the Act.
138. Pursuant to S.C. Reg. § 13-601, an Independent Public Accountant regularly engaged in business as such shall certify all financial statements submitted with an application to register securities or for inclusion in the prospectus used in South Carolina.
139. Pursuant to Dictionary of Finance and Investment Terms, certified financial statements are financial statements accompanied by an accountant's opinion, and an accountant's

opinion is a statement signed by an independent public accountant expressing his opinion based on his audit of a company's books and records. J. Downes & J. Goodman, Dictionary of Finance and Investment Terms, 304, 84 (4th ed. 1995).

Offer and Sale of a new Security

140. Changing the nature and terms of an investor's relationship to the issuer may represent the offer or sale of a new security for value. See 17 C.F.R. § 230.145(a) Preliminary Note.

141. The term "value" is broadly construed for purposes of the Securities Act of 1933 to encompass, among other things, a material change to the economic position of the offeree or purchaser of securities. 35 How. L.J. 343, 362 (Spring 1992)(citing Securities Act Release No. 929, (CCH) Fed.Sec.L.Rep. ¶ 1121 (July 29, 1936); 11 SOWARDS AND SUMMER, BUSINESS ORGANIZATION SECURITIES REGULATION § 121142.02 at 2-121 (1990 Supp.)).

142. A "purchase or a sale arises when the nature and terms of an investor's involvement in a business enterprise are substantially altered by the creation of new rights or obligations." Ingenito v. Bermac Corp., 376 F.Supp. 1154, 1181 (S.D.N.Y. 1974).

143. Jurisdiction under Section 10(b) of the Securities Exchange Act of 1934 is established where "there is alleged a substantial modification of an investment contract creating fresh rights and obligations of the parties and the investor gives some consideration." Id. at 1182.

Denying Effectiveness to a Registration Statement

144. Pursuant to S.C. Code Ann. § 35-1-306(a)(1) and (7)(A), the Securities Commissioner ("Commissioner") may issue a stop order denying effectiveness to, or suspending or revoking

the effectiveness of, a registration statement if the Commissioner finds that the order is in the public interest and that:

- a. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 35-1-306(j) as of its effective date, or a report under Section 35-1-306(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact; or
- b. The offering will work or tend to work a fraud upon purchasers, or would so operate.

145. Pursuant to S.C. Code Ann. § 35-1-306(e), a stop order may not be issued under this section without (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered; (2) an opportunity for a hearing; and (3) findings of fact and conclusions of law in a record.

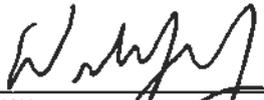
NOTICE AND OPPORTUNITY FOR A HEARING

NOTICE is hereby given that the Respondent shall have thirty days from the date of receipt of this Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement to give a written answer requesting a hearing on the matters contained herein to Thresechia Navarro, Securities Division, Post Office Box 11549, Columbia, South Carolina, 29211-1549. In the written Answer, Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Notice of Intent, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state. Within fifteen days of

receipt of a written answer requesting a hearing, this matter will be scheduled for a hearing. Respondent may then appear, with or without the assistance of an attorney, at the hearing to present testimony, evidence, and argument relating to the matters contained herein. In the event such written answer requesting a hearing is not received within the above-stated thirty-day period of time, an order denying Respondent's application for registration may be entered in this proceeding with no further notice.

By seeking to issue a stop order denying effectiveness to Respondent's registration statement for its Series 2007 Senior Notes, the Division is not waiving any rights it may have to pursue additional remedies available to it for the above or other violations of the Act committed by the Respondent.

Executed and entered, this the 9th day of October, 2007.

By: 

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Assistant Attorney General
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